

INDEPENDENT COMMISSION AGAINST CORRUPTION
IN THE MATTER OF AN INVESTIGATION KNOWN AS
OPERATION KEPPEL

OPENING STATEMENT OF
COUNSEL ASSISTING THE COMMISSION
(SCOTT ROBERTSON AND ALEX BROWN)
in relation to the public inquiry commencing on 18 October 2021

*(Note: This document should be checked against delivery and against
the official transcript of proceedings)*

Introduction and background

1. Commissioner, this is a further public inquiry conducted for the purposes of this Commission's investigation known as Operation Keppel.
2. It arises following further investigative steps that have been taken since the adjournment of the public inquiry conducted in September and October last year (**First Public Inquiry**). That public inquiry was conducted for the purpose of investigating certain allegations concerning Mr Daryl Maguire, the former Member for Wagga Wagga.
3. After the First Public Inquiry was adjourned and having regard to the evidence received in that public inquiry, the Commission decided that it was in the public interest for Operation Keppel to be expanded so as to include an investigation into certain allegations concerning the Honourable Gladys Berejiklian.
4. To date, that expanded investigation has been performed in private including through the use of this Commission's powers to require production of documents and statements of information and through the conduct of (private) compulsory examinations.

5. Having regard to the material available to the Commission as a consequence of taking those investigative steps in private, this Commission decided that it is in the public interest for a public inquiry to be conducted for the purpose of investigations focused on three categories of allegations concerning Ms Berejiklian¹ and for the purpose of this Commission’s continuing investigation into allegations concerning Mr Maguire.

This Commission’s functions

6. In order to understand that decision, it is necessary to say something about this Commission’s functions.
7. Under the *Independent Commission Against Corruption Act 1988* (NSW) (**ICAC Act**), this Commission is conferred with the function of investigating allegations or complaints, or circumstances which in the Commission’s opinion imply, that “*corrupt conduct*”, conduct liable to allow, encourage or cause the occurrence of “*corrupt conduct*” or conduct connected with “*corrupt conduct*”, may have occurred, may be occurring or may be about to occur.²
8. The Commission is directed by the ICAC Act to conduct its investigations with a view to determining (amongst other things) whether “*corrupt conduct*” has occurred and whether conduct liable to allow, encourage or cause the occurrence of “*corrupt conduct*” has occurred.³
9. The term “*corrupt conduct*” is the subject of detailed definition in the ICAC Act. As a result, the Commission’s function of investigating “*corrupt conduct*” neither extends to, nor is limited by, the concept of “*corruption*” in some general sense of that word. Rather, this Commission’s function is relevantly to investigate allegations, complaints and circumstances that imply that “*corrupt conduct*” as defined by the NSW Parliament may have occurred.

¹ See paragraph below. A statement of the allegations to be investigated in this Public Inquiry appears at **Attachment 1** to this document (p 17 below).

² See ICAC Act s 13(1).

³ See ICAC Act s 13(2).

“Corrupt conduct” for the purposes of the ICAC Act

10. For conduct to constitute “*corrupt conduct*” for the purposes of ICAC Act, it must (generally speaking) fall within the description of corrupt conduct in section 8 of the ICAC Act but not be excluded by section 9 of that Act.⁴
11. Both section 8 and section 9 of the ICAC Act identify categories of conduct. Thus, for conduct to amount to “*corrupt conduct*” it must fall within one of the categories of conduct in section 8 and one of the categories of conduct in s 9.
12. The categories of conduct in section 8 include:
 - (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions;and
 - (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust.
13. As we said in our opening statement for the First Public Inquiry,⁵ the concept invoked by the second of those categories – that is, the concept of a “*breach of public trust*” – is one that has a considerable historical pedigree.⁶ It is directed to the “*public trust and confidence*” reposed in public officers by virtue of their office.⁷ Such trust may be regarded as having been breached where, for example, a public official exercises public functions in circumstances where there is a conflict between the public official’s public duties and her or his private interest.⁸

⁴ See ICAC Act s 7(1).

⁵ See Opening Statement dated 21 October 2020 at [26]-[27]. Available at: https://www.icac.nsw.gov.au/ArticleDocuments/964/Operation%20Keppel%20Opening%20Statement_21Sep20.pdf.aspx

⁶ See, eg, Finn, “The Forgotten “Trust”: The People and the State’ in Cope (ed), *Equity: Issues and Trends* (1995) at 132-135; Hall, *Investigating Corruption and Misconduct in Public Office: Commissions of Inquiry – Powers and Procedures* (2nd ed, 2019) at [1.65].

⁷ See, eg, *R v Bembridge* (1783) 22 State Tr 1, 155-6.

⁸ See *Investigating Corruption and Misconduct in Public Office: Commissions of Inquiry – Powers and Procedures* (2nd ed, 2019) at [1.75]

14. As for the categories of conduct in section 9 of the ICAC Act, the categories of particular potential relevance to Operation Keppel:
 - (a) conduct that could constitute or involve a criminal offence⁹ such as the offence of misconduct in public office; and
 - (b) conduct that could constitute or involve a “*substantial breach of an applicable code of conduct*”.¹⁰
15. As to that latter category, the ICAC Act has – since 1995 – empowered the NSW Government to prescribe for the purposes of the ICAC Act an “*applicable code of conduct*” in relation to Ministers of the Crown.¹¹
16. That was first done by the Baird Government in September 2014¹² although the Code of Conduct prescribed on the advice of that Government (**Baird Ministerial Code of Conduct**) ceased to have force at the beginning of 1 September 2017.¹³
17. The presently “*applicable code of conduct*” for Ministers of the Crown is the one prescribed on the advice of the Berejiklian Government on 1 September 2017¹⁴ (**Berejiklian Ministerial Code of Conduct, NSW Ministerial Code of Conduct or Code of Conduct** (see **Attachment 2**)).

⁹ ICAC Act s 9(1)(a).

¹⁰ ICAC Act s 9(1)(d).

¹¹ See definition of “*applicable code of conduct*” in s 9(3)(a) of the ICAC Act.

¹² See *Independent Commission Against Corruption Regulation 2010* (NSW) (repealed by s 10(2) of the *Subordinate Legislation Act 1989* (NSW) with effect from 1 September 2017) cl 4A, Appendix. That clause and Appendix were inserted into the *Independent Commission Against Corruption Regulation 2010* (NSW) by the *Independent Commission Against Corruption Amendment (Ministerial Code of Conduct) Regulation 2014* (NSW) with effect from 20 September 2014. The Baird Ministerial Code of Conduct succeeded the *Code of Conduct for Ministers of the Crown* approved by then Premier Barry O’Farrell MP on 2 June 2011. That code of conduct was not prescribed as an applicable code of conduct for the purposes of the ICAC Act.

¹³ That occurred when the *Independent Commission Against Corruption Regulation 2010* (NSW) was automatically repealed by s 10(2) of the *Subordinate Legislation Act 1989* (NSW).

¹⁴ See *Independent Commission Against Corruption Regulation 2017* (NSW) cl 5, Appendix.

18. The Berejiklian Ministerial Code of Conduct is in substantially the same form as the Baird Ministerial Code of Conduct save that the Berejiklian Code of Conduct was amended late last year so as expressly to prohibit Ministers and Parliamentary Secretaries from accepting or seeking payment of a commission from a property developer, either directly or through a third party.¹⁵

19. The Berejiklian Ministerial Code of Conduct commences by observing that:¹⁶

It is essential to the maintenance of public confidence in the integrity of Government that Ministers exhibit and be seen to exhibit the highest standards of probity in the exercise of their offices and that they pursue and be seen to pursue the best interests of the people of New South Wales to the exclusion of any other interest.

20. To further those principles, the Code of Conduct “*prescribes standards of ethical behaviour and imposes internal governance practices directed towards ensuring that possible breaches of ethical standards are avoided*”.¹⁷

21. For example, cl 6 of the Code expressly provides that:

A Minister, in the exercise or performance of their official functions, must not act dishonestly, must act only in what they consider to be the public interest, and must not act improperly for their private benefit or for the private benefit of any other person.

22. Further, clause 7, subclause(1) of the Code provides that:

A Minister must not knowingly conceal a conflict of interest from the Premier.

and clause 7, subclause (2) provides that:

A Minister must not, without the written approval of the Premier, make or participate in the making of any decision or take any other action in relation to a matter in which the Minister is aware they have a conflict of interest.

¹⁵ See *Statute Law (Miscellaneous Provisions) Act 2020* (NSW) Sch 1.25, which inserted Part 3A (Commissions from property developers) into the NSW Ministerial Code of Conduct.

¹⁶ NSW Ministerial Code of Conduct, preamble, cl 1.

¹⁷ NSW Ministerial Code of Conduct, preamble, cl 6.

23. The Schedule to the NSW Ministerial Code of Conduct “*prescribes certain additional administrative and governance requirements that Ministers (and in some cases Parliamentary Secretaries) must comply with and that are directed to minimising the risk and opportunities for breach of the Code*”.¹⁸
24. “[A] substantial breach of the Schedule is, if done knowingly, a substantial breach of the NSW Ministerial Code of Conduct”¹⁹ and may therefore constitute “*corrupt conduct*” of a kind that this Commission has a function to investigate.
25. Part 3 of the Schedule contains administrative and governance requirements in relation to conflicts of interest. Those requirements include:
 - (a) a requirement that a Minister promptly give notice to the Premier of any conflict of interest that arises in relation to any matter;²⁰ and
 - (b) a requirement that a Minister who has a conflict of interest in a matter must abstain from making, or participating in, any decision or from taking, or participating in, any action in relation to the matter absent a ruling by the Premier – or, in the case of the Premier, a ruling approved by the Cabinet²¹ – that no conflict of interest arises or that any potential conflict of interest can be appropriately managed;²² and
26. Part 3 also includes requirements to the effect that, if during a meeting of the Cabinet or a Cabinet Committee a matter arises in which a Minister has a conflict of interest, the Minister must:
 - (a) disclose to those present the conflict of interest and the matter to which it relates as soon as practicable after the commencement of the meeting;²³

¹⁸ NSW Ministerial Code of Conduct, preamble, cl 8.

¹⁹ NSW Ministerial Code of Conduct, cl 4.

²⁰ NSW Ministerial Code of Conduct, Sch cl 10(1).

²¹ See NSW Ministerial Code of Conduct, Sch cl 27(5).

²² NSW Ministerial Code of Conduct, Sch cl 12.

²³ NSW Ministerial Code of Conduct, Sch cl 11(2)(a).

- (b) ensure that the making of the disclosure is recorded in the official record of the proceedings;²⁴
- (c) abstain from participating in any discussion of the matter and from decision-making in respect of it absent a ruling that no conflict of interest arises or that any potential conflict of interest can be appropriately managed;²⁵ and
- (d) not be present during any discussion or decision-making on the matter unless the Premier (or the chair of the meeting in the absence of the Premier) otherwise approves.²⁶

27. One issue to be investigated in this public inquiry is whether Ms Berejiklian breached any of those requirements either as Treasurer or Premier and, if so, how and why.

What is a “*conflict of interest*” for the purposes of the Ministerial Code?

28. It should be apparent from what we have so far said that the concept of a “*conflict of interest*” is a central concept under the Berejiklian Ministerial Code of Conduct, as it was under the Baird Ministerial Code of Conduct before it.

29. The term “*conflict of interest*” is defined by the Code in the following terms:²⁷

A *conflict of interest* arises in relation to a Minister if there is a conflict between the public duty and the private interest of the Minister, in which the Minister’s private interest could objectively have the potential to influence the performance of their public duty.

²⁴ NSW Ministerial Code of Conduct, Sch cl 11(2)(b).

²⁵ NSW Ministerial Code of Conduct, Sch cl 11(2)(c), 12. Subclause 12(3)(a) (which requires a Minister who has a conflict of interest in a matter arising during a meeting of the Executive Council, the Cabinet or a Cabinet Committee to abstain from participating in discussion and decision making) is not, in terms, expressed to be subject to cl 12(2) (which empowers the Premier to make a ruling authorising a Minister to continue to act if satisfied that no conflict of interest arises or that any potential conflict of interest can be appropriately managed). However, it is submitted that – when cl 12(3)(a) is read in the context of the Schedule as a whole and, in particular, cl 11(2)(c) thereof – cl 12(3)(a) should be understood as being subject to cl 12(2) with the result that a Minister who has a conflict of interest may continue to act if the Premier makes a ruling authorising that course. Such a ruling may be given in respect of the Premier if approved by the Cabinet: NSW Ministerial Code of Conduct, Sch cl 27(5).

²⁶ NSW Ministerial Code of Conduct, Sch cl 12(3)(b).

²⁷ NSW Ministerial Code of Conduct, cl 7(3).

30. In that definition, the term “*private interest*” is not limited to pecuniary interests (that is, interests sounding or measured in money); it extends to non-pecuniary private interests.
31. The kinds of interests that may be “*private interests*” for the purposes of the Code are manifold and include what could be described as private concerns or personal connections.²⁸ For example, where a Minister’s attention or concern is particularly engaged in relation to a person²⁹ by reason of their personal association or connection with them – whether that association or connection be one of friendship, enmity, family relation or romantic involvement – a “*private interest*” for the purposes of the Code may exist depending upon the circumstances.
32. That explains why it is sometimes necessary (and, in many cases, will at least be desirable) for a Minister to disclose any substantial personal connection that she or he has to a person relevant to a proposed decision, even if the Minister would not her or himself receive a private benefit if the decision is made.
33. For example:
 - (a) in 2013, Ms Berejiklian declared an interest to Cabinet and abstained from discussions regarding the appointment of a particular individual to a government board “*due to attendance with [that individual] at functions*”;³⁰
 - (b) in 2017, Ms Berejiklian made a disclosure under the NSW Ministerial Code of Conduct to the effect that two of her cousins were then employed in the NSW Public Service;³¹

²⁸ See, eg, NSW Ministerial Code of Conduct Sch cl 13 (discretion to disclose) which confirms that a “*substantial personal connection*” is an “*interest*” for the purposes of the Code (although not necessarily one which comprises a conflict of interest in a particular case).

²⁹ See Macquarie Dictionary (online edition), definition of “*interest*”, first and fourth senses.

³⁰ Vol 33, 253 (Proposed Exhibit 373).

³¹ Vol 33, 251 (Proposed Exhibit 374).

- (c) in 2018, Ms Berejiklian made a declaration of interest to Cabinet in relation to a particular Liberal Party supporter in relation to a potential appointment of that person to a Government advisory board;³² and
- (d) in 2019, Ms Berejiklian declared to Cabinet that a particular person proposed to be appointed to a government board was “*known to [her]*”;³³

34. So far as the material presently available to this Commission reveals, Ms Berejiklian never gave a disclosure under the NSW Ministerial Code of Conduct in relation to Mr Maguire.

35. The foregoing is not to suggest that a “*conflict of interest*” for the purposes of the Code will always exist whenever a Minister has a substantial personal connection to a person associated with a particular decision or other action. Indeed, the NSW Ministerial Code of Conduct itself recognises that some substantial personal connections might not raise a conflict of interest but nevertheless permits a Minister to, in her or his discretion, disclose an interest and abstain from decision-making even if the interest might not comprise a conflict of interest.³⁴ Thus, the fact that Ms Berejiklian disclosed interests arising from personal connections from time to time does not necessarily mean that a “*conflict of interest*” relevantly existed or was thought to exist.

36. Further, even when a “*conflict of interest*” exists, a Minister is not necessarily excluded by the Code from making or participating in a decision or other action. Where a “*conflict of interest*” exists and can be managed, a Minister may be able to continue to act despite her or his conflict. For example, where a Premier has a “*conflict of interest*” in relation to a matter before Cabinet, her or his Cabinet can approve the Premier continuing to play a role in decision-making in relation to the matter. But only if the “*conflict of interest*” is disclosed.

³² Vol 33, 253 (Proposed Exhibit 373).

³³ Vol 33, 253 (Proposed Exhibit 373).

³⁴ NSW Ministerial Code of Conduct Sch cl 13.

37. Before leaving the Berejiklian Ministerial Code of Conduct, it is important to make an observation about the nature of that Code and this Commission’s functions in relation to it.
38. The Berejiklian Ministerial Code of Conduct is not a criminal statute. Nor is it a source of civil liability cognisable in the courts. Rather, it is a Code that prescribes “*standards of ethical behaviour*” and “*internal governance practices*”³⁵ that Ms Berejiklian and her Ministers set for themselves.
39. This Commission has been charged by the Parliament – and, indirectly, by Ms Berejiklian and her Ministers – with investigating certain allegations and circumstances which imply that a substantial breach of the NSW Ministerial Code of Conduct may have occurred.³⁶
40. In many cases, this Commission will be the only body capable of effectively investigating an alleged substantial breach of the NSW Ministerial Code of Conduct, at least in the absence of the Premier causing for such an investigation to be undertaken.³⁷
41. Alleged breaches of the Code of Conduct cannot, for example, be investigated by the NSW Police Force because a breach of the Code does not amount to a crime.

³⁵ NSW Ministerial Code of Conduct, preamble, cl 6.

³⁶ See ICAC Act ss 7, 8, 9(1)(d), 13(1) and *Independent Commission Against Corruption Regulation 2017* (NSW) cl 5 the combined effect of which is that this Commission has the function of investigating allegations or complaints regarding conduct constituting or involving a substantial breach of the NSW Ministerial Code of Conduct where the allegation or falls within the description of corrupt conduct in s 8 of the ICAC Act.

³⁷ Note under cl 26 of the Schedule to the NSW Ministerial Code of Conduct, “[t]he enforcement of the requirements of [that] Schedule, including any sanctions for breach, is a matter for the Premier”.

42. Indeed, even the Parliament may not be in a position effectively and fully to investigate an alleged substantial breach of the Ministerial Code given that the power of the Houses of Parliament to require the production of documents is limited in relation to Cabinet documents³⁸ and given that one House of Parliament does not have the power to require the attendance of a member of the other House to give evidence.³⁹ Like restrictions do not apply to the investigative powers of this Commission.⁴⁰

The matters to be investigated through this public inquiry

43. With that sketch of this Commission’s functions in mind, we now turn to the matters to be further investigated through the conduct of this public inquiry.

44. As we said at the outset, the matters to be investigated in this public inquiry concerning Ms Berejiklian can be seen to fall within three categories:

- (a) **First**, allegations that Ms Berejiklian engaged in partial conduct or conduct constituting or involving a breach of public trust in relation to certain projects in Wagga Wagga advanced by Mr Daryl Maguire;
- (b) **Secondly**, an allegation that Ms Berejiklian refused to discharge her duty under the ICAC Act to notify this Commission of possible corrupt conduct; and
- (c) **Thirdly**, an allegation that Ms Berejiklian engaged in conduct that was liable to allow or encourage the occurrence of “*corrupt conduct*” by Mr Maguire.

³⁸ See *Egan v Chadwick* (1999) 46 NSWLR 563 at 576 [69]-[71] per Spigelman CJ, 597 [154] per Meagher JA.

³⁹ See Lovelock and Evans, *New South Wales Legislative Council Practice* (2008) at 497-499.

⁴⁰ See, eg, ICAC Act s 24(3) which provides that a person must comply with a requirement to produce any statement of information or to produce any document or other thing despite “*any rule which in proceedings in a court of law might justify an objection to compliance with a like requirement on grounds of public interest*” or “*any duty of secrecy or other restriction on disclosure*”.

Allegation 2(a) – Conduct in relation to certain projects advanced by Mr Maguire

45. This public inquiry will examine the first category of allegations concerning Ms Berejiklian with a particular focus on two case studies:

- (a) first, grant funding awarded to the Australian Clay Target Association Incorporated; and
- (b) secondly, grant funding promised and/or awarded to the Riverina Conservatorium of Music in Wagga Wagga.

46. At the outset, we make clear that the material presently available to the Commission does not suggest that any officer or employee of the Australian Clay Target Association or the Riverina Conservatorium of Music engaged in corrupt conduct in relation to grant funding sought on behalf of either of those organisations. This public inquiry is instead focused on the conduct of Ms Berejiklian and Mr Maguire in relation to grant funding sought and/or awarded to those two organisations.

47. We expect the evidence to demonstrate that, over an extended period, Mr Maguire was a strong supporter of certain building projects advanced by the Australian Clay Target Association and the Riverina Conservatorium of Music and vociferously advocated for government support for those projects within Government, including to Ms Berejiklian directly.

48. We also expect the evidence to demonstrate that Ms Berejiklian made or participated in the making of decisions and took other steps that advanced the building projects advocated for by Mr Maguire without disclosing to anyone within Government that she was in a close personal relationship with Mr Maguire at the time that she took those steps. It will be recalled that, during First Public Inquiry, both Ms Berejiklian and Mr Maguire gave evidence to the effect that they were in a close personal relationship with each other from at least 2015 if not earlier.⁴¹

⁴¹ T1357.12-1357.37 (Berejiklian), Exhibit 372 (Maguire).

49. Ordinarily, it is entirely a matter for the parties to a relationship to decide whether they disclose the existence of that relationship to anyone and, if so, to who.
50. However, there are circumstances in which a person's ordinary entitlement to privacy must be subordinated to their public duty. Put in another way, public duties come first.
51. For example, whilst a person holds an office of public trust such as the office of Premier or Treasurer, it may be necessary for that person to disclose that she or he is in a personal relationship with a particular person if the existence of that relationship is something that could objectively have the potential to influence the performance of the officeholder's public duties.
52. Importantly, that obligation of disclosure may arise even if the officeholder thinks that they are able to compartmentalise their public and private lives.
53. That is for a number of reasons including that, in a particular case, there may be a risk that an officeholder's personal concern for another may – whether consciously or subconsciously – influence or be seen to have the potential to influence the performance of the officeholder's public duties. That risk can be avoided or managed if the risk of conscious or subconscious influence is identified and managed.
54. The disclosure of potential conflicts is of particular importance, we submit, in relation to very senior public officials such as the Premier and Treasurer.
55. We expect the evidence to demonstrate that various public officials were influenced in the steps that they took in relation to the building projects to be considered in this public inquiry by what those public officials understood to be Ms Berejiklian's support for, or interest in, those projects. We also expect that there will be evidence to the effect that a number of public officials would have acted differently had they known about Ms Berejiklian's close personal relationship with Mr Maguire.

56. That is potentially significant as it may mean that funding proposals advanced by Mr Maguire may have been given a level of priority or attention that they may not have been given had Ms Berejiklian disclosed the existence of her personal relationship with Mr Maguire. That may have been to the detriment of equally or more deserving projects or funding proposals.
57. In that regard, we observe that we expect the evidence to demonstrate that the proposals being investigated in this public inquiry were not subjected to a competitive assessment as to whether those proposals (or either of them) should be preferred to other possible demands on the public purse. While that does not (without more) indicate corruption, it does raise the possibility that Ms Berejiklian's conduct had the effect of preferring organisations based in Wagga Wagga to other equally or more deserving organisations based elsewhere in this State.

Allegation 2(b) – Duty to report

58. Turning then to the second category of allegations concerning Ms Berejiklian: whilst she was a Minister of the Crown, Ms Berejiklian – like all other Ministers and like principal officers of public authorities – had a duty to report to this Commission any matter that she suspected on reasonable grounds concerned or may concern corrupt conduct.⁴²
59. Ministers of the Crown may make a report to the head of any agency responsible to the Minister as an alternative to making a report directly to this Commission.⁴³

⁴² ICAC Act s 11.

⁴³ ICAC Act s 11(3A).

60. The Commission has no record of Ms Berejiklian making any report to it of any suspicion by her that Mr Maguire may have been engaged in corrupt conduct. There is also no material presently available to this Commission to the effect that Ms Berejiklian made any report of suspected corrupt conduct to a head of an agency responsible to Ms Berejiklian.
61. That is so even after Mr Maguire gave evidence before this Commission on 13 July 2018 during a public inquiry conducted for the purpose of the investigation known as Operation Dasha.
62. During Mr Maguire's evidence on that occasion, Mr Maguire initially denied that he had ever attempted to do business with Michael Hawatt, a councillor of the former Canterbury Council, or that Mr Hawatt had ever attempted to do business with him.⁴⁴
63. However, after intercepted telephone calls between Mr Maguire and Mr Hawatt were played to the Operation Dasha Public Inquiry, Mr Maguire ultimately accepted that he was planning to share in commissions obtained from property developers who sold their properties to clients of Mr Maguire.⁴⁵
64. Ms Berejiklian asked for and obtained Mr Maguire's resignation as Parliamentary Secretary late on the afternoon of 13 July 2018 and, in a public statement issued two days later, said that she was "*shocked*" by the events of the 13th and expressed the view that Mr Maguire had "*let down his constituents, the people of NSW and the NSW Liberal Party*".⁴⁶

⁴⁴ See transcript of evidence given by Mr Maguire in Operation Dasha Public Inquiry at 2331.40-2331.48 (Operation Keppel Exhibit 113).

⁴⁵ See transcript of evidence given by Mr Maguire in Operation Dasha Public Inquiry on 13 July 2018 (Operation Keppel Exhibit 113) at 2349, 2357.35, 2360.32-2360.39.

⁴⁶ Vol 34, 103 (Proposed Exhibit 375).

65. In a compulsory examination held in private on 18 September this year, I asked Ms Berejiklian whether – by the time that she asked for Mr Maguire’s resignation as Parliamentary Secretary late on 13 July 2018 – she suspected that Mr Maguire had been or may have been engaged in corrupt conduct. I will have played one of my exchanges with Ms Berejiklian in relation to that issue.

[1:58 segment of compulsory examination on 18 September 2021 to be played (Proposed Exhibit 376)]

66. An issue arises as to whether this Commission should accept that evidence and, if not, to consider why Ms Berejiklian did not make a report to this Commission concerning Mr Maguire.

Allegation 2(c) – Conduct liable to allow or encourage corrupt conduct by Mr Maguire

67. The third category of allegation to be investigated in this public inquiry is an allegation that Ms Berejiklian engaged in conduct that was liable to allow or encourage the occurrence of corrupt conduct by Mr Maguire.

68. During the First Public Inquiry, evidence was received suggesting that Mr Maguire told Ms Berejiklian information concerning aspects of some of the matters that Mr Maguire ultimately admitted involved an attempt to monetise his offices as a Member of Parliament, Parliamentary Secretary and Chair of the NSW Parliament Asia Pacific Friendship Group.⁴⁷

69. There was also evidence that suggested, on one view, that Ms Berejiklian sought to limit the information that she had regarding Mr Maguire’s activities including evidence of a conversation between Ms Berejiklian and Mr Maguire in which Ms Berejiklian – referring to a “*deal*” that Mr Maguire was attempting to do – said “*I don’t need to know about that bit*”.⁴⁸

⁴⁷ T1566.21 (Maguire).

⁴⁸ Exhibit 327.

70. Although, in the First Public Inquiry, Ms Berejiklian rejected any suggestion that she was seeking to blind herself from information that might require her to take action in relation to Mr Maguire's conduct,⁴⁹ a question arises as to whether Ms Berejiklian's apparent inaction in relation to the information provided to her by Mr Maguire was apt to allow or encourage Mr Maguire to engage in corrupt conduct. Investigating that matter forms part of this Commission's function of investigating allegations or complaints that conduct liable to allow or encourage the occurrence of corrupt conduct has occurred.⁵⁰

Conclusion

71. Commissioner, as we have already mentioned, the Berejiklian Ministerial Code of Conduct opens by stating that:

It is essential to the maintenance of public confidence in the integrity of Government that Ministers exhibit and be seen to exhibit the highest standards of probity in the exercise of their offices and that they pursue and be seen to pursue the best interests of the people of New South Wales to the exclusion of any other interest.

72. This public inquiry will investigate whether Ms Berejiklian exhibited those high standards of probity that she set for herself and her Ministers.

18 October 2021

SCOTT ROBERTSON

ALEX BROWN

⁴⁹ See T1422.1-1426.45 (Berejiklian).

⁵⁰ See ICAC Act s 13(1)(a)(ii).

Attachment 1 – Allegations to be investigated

1. *Whether between 2012 and August 2018 Mr Daryl Maguire MP engaged in conduct that involved a breach of public trust by using his public office, involving his duties as a member of the NSW Parliament and the use of parliamentary resources, to improperly gain a benefit for himself, G8way International/G8way International Pty Ltd and associated persons.*
2. *Whether, between 2012 and 2018, the Honourable Gladys Berejiklian MP engaged in:*
 - a. *conduct that constituted or involved a breach of public trust by exercising public functions in circumstances where she was in a position of conflict between her public duties and her private interest as a person who was in a personal relationship with Mr Daryl Maguire:*
 - i. *grant funding promised and/or awarded to the Australian Clay Target Association Inc in 2016/2017;*
 - ii. *grant funding promised and/or awarded to the Riverina Conservatorium of Music in Wagga Wagga in 2018;*

and/or
 - b. *conduct that constituted or involved the partial exercise of any of her official functions, in connection with:*
 - i. *grant funding promised and/or awarded to the Australian Clay Target Association Inc in 2016/2017;*
 - ii. *grant funding promised and/or awarded to the Riverina Conservatorium of Music in Wagga Wagga in 2018;*

and/or
 - c. *conduct that constituted or involved the dishonest or partial exercise of any of her official functions and/or a breach of public trust by refusing to exercise her duty pursuant to s 11 of the Independent Commission Against Corruption Act 1988 (NSW) to report any matter that she suspected on reasonable grounds concerned or may concern corrupt conduct in relation to the conduct of Mr Daryl Maguire;*
 - d. *conduct that was liable to allow or encourage the occurrence of corrupt conduct by Mr Daryl Maguire.*

Attachment 2 – *Independent Commission Against Corruption Regulation 2017* (as made)

(which prescribed the NSW Ministerial Code of Conduct as an “*applicable code of conduct*” for the purposes of the ICAC Act)



New South Wales

Independent Commission Against Corruption Regulation 2017

under the

Independent Commission Against Corruption Act 1988

His Excellency the Governor, with the advice of the Executive Council, and on the recommendation of the Chief Commissioner of the Independent Commission Against Corruption, has made the following Regulation under the *Independent Commission Against Corruption Act 1988*.

GLADYS BEREJIKLIAN, MP
Premier

Explanatory note

The object of this Regulation is to remake, without substantive changes, the *Independent Commission Against Corruption Regulation 2010*, which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the code of conduct applicable to Ministers of the Crown,
- (b) the security checks of staff of the Independent Commission Against Corruption and associated persons and the disclosure of financial interests of staff and associated persons,
- (c) the making of statutory declarations by companies or partnerships,
- (d) the requirement that staff comply with this Regulation as a condition of employment,
- (e) the use of the seal of the Commission,
- (f) the issuing of identity cards,
- (g) the bodies that are public authorities and persons who are principal officers of public authorities and offices within public authorities.

This Regulation is made under the *Independent Commission Against Corruption Act 1988*, including sections 3 (1) (definition of **public authority**), 9 (3) (definition of **applicable code of conduct**), 11 (5) and (6), 110 and 117 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Independent Commission Against Corruption Regulation 2017

under the

Independent Commission Against Corruption Act 1988

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Independent Commission Against Corruption Regulation 2017*.

2 Commencement

This Regulation commences on 1 September 2017 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Independent Commission Against Corruption Regulation 2010*, which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

affiliated health organisation has the same meaning as it has in the *Health Services Act 1997*.

approved means approved for the time being by the Chief Commissioner.

associated person is defined in clause 4.

dependent child of a person means anyone who is under the age of 18 years and is a child of the person or of the person's spouse.

financial interest, in relation to an officer of the Commission or an applicant for a position as an officer of the Commission, means:

- (a) any pecuniary interest or other matter, referred to in section 110 (a) (i)–(xi) of the Act, that relates to the officer or applicant, or
- (b) any such interest or other matter that relates to a person who is associated with the officer or applicant.

spouse means:

- (a) a husband or wife, or
- (b) a de facto partner,

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

Note. "De facto partner" is defined in section 21C of the *Interpretation Act 1987*.

statutory health corporation has the same meaning as it has in the *Health Services Act 1997*.

the Act means the *Independent Commission Against Corruption Act 1988*.

- (2) For the purposes of section 110 (a) (xii) of the Act, the pecuniary interests or other matters referred to in paragraph (b) of the definition of *financial interest* in subclause (1) are specified.
- (3) The Appendix to this Regulation forms part of this Regulation, but notes included in this Regulation do not form part of this Regulation.

4 Associated persons

- (1) In this Regulation, a reference to a person who is associated with an officer of the Commission, or an applicant for a position as an officer of the Commission, is a reference to:
 - (a) in the case of an officer or applicant who is an individual, any of the individual's family or business associates, or
 - (b) in the case of an officer or applicant that is a company engaged under section 104B of the Act:
 - (i) any of the company's key personnel, or
 - (ii) any of those key personnel's family or business associates, or
 - (iii) any of the company's related bodies corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth).
- (2) For the purposes of this clause:
 - (a) the following persons are an individual's family associates:
 - (i) the individual's spouse,
 - (ii) the individual's dependent children,
 - (iii) such other members of the individual's household or family as the Chief Commissioner may specify in respect of a particular individual or class of individuals, and
 - (b) the following persons are an individual's business associates:
 - (i) the individual's employer,
 - (ii) any such employer's key personnel (in the case of an employer that is a company),
 - (iii) the individual's partners in any partnership of which the individual is a member,
 - (iv) such employees of any such partnership, and such other persons having contractual relationships with the partnership, as the Chief Commissioner may specify in respect of a particular partnership or class of partnerships,
 - (v) the individual's employees,
 - (vi) such other persons having contractual relationships with the individual as the Chief Commissioner may specify in respect of a particular individual or class of individuals, and
 - (c) the following persons are a company's key personnel:
 - (i) the directors of the company,
 - (ii) the secretary of the company,
 - (iii) such officers or employees of the company, such shareholders in the company and such other persons having contractual relationships with the company as the Chief Commissioner may specify in respect of a particular company or class of companies.

Part 2 Codes of conduct

5 NSW Ministerial Code of Conduct

The NSW Ministerial Code of Conduct set out in the Appendix to this Regulation is prescribed as an applicable code of conduct for the purposes of section 9 of the Act.

Part 3 Security

6 Disclosure of certain information

- (1) The Chief Commissioner may at any time require an officer of the Commission, or an applicant for a position as an officer of the Commission, to furnish to the Chief Commissioner a statement of personal particulars, in the approved form, in relation to:
 - (a) the officer or applicant, or
 - (b) any other person who is associated with the officer or applicant.
- (2) The statement must be accompanied by an authority for the release of information, and a consent to conduct inquiries, each in the approved form and each duly executed by the person to whom the statement relates.
- (3) An officer or applicant who is required to furnish to the Chief Commissioner one or more statements under this clause must, when furnishing that statement or those statements, also furnish the Chief Commissioner with a statutory declaration, in the approved form, concerning the officer's or applicant's association (if any) with known or reputed criminals.

7 Production of certain documents

- (1) The Chief Commissioner may require an officer of the Commission, or an applicant for a position as an officer of the Commission, to furnish to the Chief Commissioner such of the documents referred to in subclause (2) or (3) relating to:
 - (a) the officer or applicant, or
 - (b) any other person who is associated with the officer or applicant, as are in the possession of the officer or applicant or to which the officer or applicant has an immediate right of possession.
- (2) The documents to be furnished in the case of an individual are as follows:
 - (a) a birth certificate or a duly certified extract of a birth certificate,
 - (b) a marriage certificate or a duly certified extract of a marriage certificate,
 - (c) a current passport,
 - (d) a current driver's licence,
 - (e) a duly certified copy of any registered deed by which the individual has formally changed the individual's name,
 - (f) a certificate of naturalisation,
 - (g) a certificate of discharge from the Defence Force,
 - (h) a certificate evidencing the individual's educational, professional or trade qualifications,
 - (i) the most recent income tax return lodged by, and the most recent income tax assessment issued in relation to, the individual.
- (3) The documents to be furnished in the case of a company or partnership engaged under section 104B of the Act are as follows:
 - (a) a copy of the constitution of the company or of the agreement establishing the partnership,
 - (b) the most recent annual report of the company or partnership,
 - (c) the most recent audited financial statement in relation to the company or partnership,

- (d) the most recent income tax return lodged by, and the most recent income tax assessment issued in relation to, the company or the several partners in the partnership.

8 Fingerprints to be furnished

- (1) The Chief Commissioner may require an officer of the Commission, or an applicant for a position as an officer of the Commission, to furnish to the Chief Commissioner an imprint of the officer's or applicant's fingerprints.
- (2) If the officer or applicant is a company or partnership engaged or to be engaged under section 104B of the Act, the Chief Commissioner may require the officer or applicant to furnish to the Chief Commissioner an imprint of the fingerprints of:
 - (a) any specified associate of the company, or
 - (b) any specified associate of a partner in the partnership.
- (3) Fingerprint imprints obtained by the Commission from an applicant, or an associate of an applicant, are to be destroyed within 6 months after the application is determined unless, within that time, the applicant becomes an officer of the Commission.
- (4) Fingerprint imprints obtained by the Commission from an officer, or an associate of an officer, are to be destroyed within 6 months after the officer ceases to be an officer.
- (5) In the case of an officer:
 - (a) who is under investigation by the Commission when the officer ceases to be an officer, or
 - (b) who becomes subject to such an investigation within 6 months after ceasing to be an officer,

the Commission may retain the fingerprint imprints of the officer, or of any associate of the officer, for such further period as is necessary to complete the investigation and any legal proceedings arising from the investigation.

9 Changes in personal particulars to be notified

An officer of the Commission who becomes aware of any significant change in the personal particulars in relation to:

- (a) the officer, or
- (b) any person who is associated with the officer and in respect of whom the officer has previously furnished a statement of personal particulars under this Part,

must immediately furnish a statement of that change, in the approved form, to the Chief Commissioner.

10 Conflict of interests to be notified

If an officer of the Commission becomes aware of any conflict of interest that has arisen, or that could be seen as having arisen, between the officer's duties as an officer and the officer's private interests, the officer must immediately notify the Chief Commissioner of that fact.

Part 4 Disclosure of financial interests

11 Disclosure of certain financial information

- (1) On becoming an officer of the Commission, the officer must furnish to the Chief Commissioner a statement of financial interests, in the approved form, in relation to the officer.
- (2) Without limiting subclause (1), the Chief Commissioner may at any time require an officer of the Commission, or an applicant for a position as an officer of the Commission, to furnish to the Chief Commissioner a statement of financial interests, in the approved form, in relation to:
 - (a) the officer or applicant, or
 - (b) any other person who is associated with the officer or applicant.

12 Changes in financial interests to be notified

An officer of the Commission who becomes aware of any significant change in the financial interests in relation to:

- (a) the officer, or
- (b) any person who is associated with the officer and in respect of whom the officer has previously furnished a statement of financial interests under this Part,

must immediately furnish a statement of that change, in the approved form, to the Chief Commissioner.

13 Exemptions from this Part

The Chief Commissioner:

- (a) may at any time exempt any particular officer or class of officers from the requirements of this Part, and
- (b) may at any time impose conditions on any such exemption, and
- (c) may at any time revoke any such exemption or any condition to which any such exemption is subject.

Part 5 Miscellaneous

14 Further information

The Chief Commissioner may require an officer of the Commission, or an applicant for a position as an officer of the Commission, to furnish to the Chief Commissioner such further information as the Chief Commissioner may specify in respect of any matter disclosed to the Chief Commissioner by the officer or applicant for the purposes of this Regulation.

15 Statutory declarations

A statutory declaration that, by or under this Regulation, is required to be made by a company or partnership engaged or to be engaged under section 104B of the Act must be made on behalf of the company or partnership by such of the directors or employees of the company, or by such of the partners in or employees of the partnership, as the Chief Commissioner may direct.

16 Compliance with Regulation a condition of employment

- (1) It is a condition of an officer's employment or engagement with the Commission that the officer complies with the requirements of this Regulation.
- (2) Failure to comply with any such requirement is sufficient ground for terminating the officer's employment or engagement.
- (3) This clause has effect despite any other condition of the officer's conditions of employment or engagement.
- (4) A person does not fail to comply with the requirements of this Regulation merely because the person fails to disclose matters of which the person is not aware.

17 Seal of the Commission

The seal of the Commission must be kept in the custody of a Commissioner and affixed to a document of the Commission in the presence of a Commissioner, or of an Assistant Commissioner, and of one other member of staff of the Commission.

18 Identity cards

The Chief Commissioner may issue identity cards, in the approved form, to officers of the Commission.

19 Definition of "public authority"

For the purposes of paragraph (g) of the definition of **public authority** in section 3 (1) of the Act the following are declared to be a body within that definition:

- (a) each affiliated health organisation and statutory health corporation,
- (b) each reserve trust established under the *Crown Lands Act 1989* in relation to a reserve or part of a reserve that is dedicated or reserved for the purposes of a public cemetery or crematorium or a related purpose.

20 Principal officers of public authorities

- (1) For the purposes of section 11 (5) of the Act, the principal officers of the following public authorities are as follows:
 - (a) the council of a local government area—the general manager of the council,
 - (b) a local health district within the meaning of the *Health Services Act 1997*—the chief executive of the local health district,

- (c) a statutory health corporation—the chief executive of the statutory health corporation,
- (d) an affiliated health organisation—the person who is responsible to the governing body of the affiliated health organisation for the management of its recognised establishments and recognised services.

(2) For the purposes of section 11 (6) of the Act, the principal officers in relation to matters concerning the following separate offices of public authorities are as follows:

- (c) Aboriginal Affairs, Department of Education—the Chief Executive of Aboriginal Affairs,
- (d) Ageing, Disability and Home Care, Department of Family and Community Services—the Chief Executive of Ageing, Disability and Home Care,
- (a) Ambulance Service of NSW, NSW Health Service—the chief executive of the Ambulance Service of NSW,
- (e) Community Services, Department of Family and Community Services—the Chief Executive of Community Services,
- (b) Corrective Services NSW, Department of Justice—the Commissioner of Corrective Services,
- (f) Housing NSW, Department of Family and Community Services—the Chief Executive of Housing NSW,
- (g) Juvenile Justice, Department of Justice—the Chief Executive of Juvenile Justice.

21 Savings

Any act, matter or thing that, immediately before the repeal of the *Independent Commission Against Corruption Regulation 2010*, had effect under that Regulation continues to have effect under this Regulation.

Appendix NSW Ministerial Code of Conduct

Preamble

- 1 It is essential to the maintenance of public confidence in the integrity of Government that Ministers exhibit and be seen to exhibit the highest standards of probity in the exercise of their offices and that they pursue and be seen to pursue the best interests of the people of New South Wales to the exclusion of any other interest.
- 2 Ministers are individually and collectively responsible to the Parliament. Their ultimate responsibility is to the people of New South Wales, to whom they have pledged their loyalty under section 35CA of the *Constitution Act 1902*.
- 3 Ministers have a responsibility to maintain the public trust that has been placed in them by performing their duties with honesty and integrity, in compliance with the rule of law, and to advance the common good of the people of New South Wales.
- 4 Ministers acknowledge that they are also bound by the conventions underpinning responsible Government, including the conventions of Cabinet solidarity and confidentiality.
- 5 Ministers also have a responsibility to ensure that they do not act in a way that would place others, including public servants, in a position that would require them to breach the law or their own ethical obligations including those prescribed in the *Government Sector Employment Act 2013*. That duty does not, however, limit Ministerial discretion to make decisions and direct departments in accordance with the principle of departmental responsibility to Ministers, including to disagree with advice and recommendations put to them by public servants.
- 6 To further those principles, the NSW Ministerial Code of Conduct has been established, which prescribes standards of ethical behaviour and imposes internal governance practices directed toward ensuring that possible breaches of ethical standards are avoided.
- 7 The NSW Ministerial Code of Conduct is adopted for the purposes of section 9 of the *Independent Commission Against Corruption Act 1988*. The Code also applies to Parliamentary Secretaries.
- 8 The Schedule to the NSW Ministerial Code of Conduct prescribes certain additional administrative and governance requirements that Ministers (and in some cases Parliamentary Secretaries) must comply with and that are directed to minimising the risk and opportunities for breaches of the Code.
- 9 A substantial breach of the NSW Ministerial Code of Conduct (including a knowing breach of any provision of the Schedule) may constitute corrupt conduct for the purposes of the *Independent Commission Against Corruption Act 1988*.
- 10 The NSW Ministerial Code of Conduct is not intended to be a comprehensive statement of ethical conduct by Ministers. It is not possible to anticipate and make prescriptive rules for every contingency that might raise an ethical issue for a Minister. In all matters, however, Ministers are expected always to conform with the principles referred to above.
- 11 In particular, Ministers have a responsibility to avoid or otherwise manage appropriately conflicts of interest to ensure the maintenance of both the actuality and appearance of Ministerial integrity.
- 12 Further, and in addition to the rules set out in this Code, Ministers are subject to a range of civil and criminal laws in their capacity as holders of public office, as well as to standards of conduct applying to them in their capacity as Members of Parliament.

NSW Ministerial Code of Conduct

1 Preliminary

- (1) This is the NSW Ministerial Code of Conduct.
- (2) The NSW Ministerial Code of Conduct applies to all current and future Ministers and Governments.

Note. The NSW Ministerial Code of Conduct is prescribed by the *Independent Commission Against Corruption Regulation 2017* for the purposes of section 9 of the *Independent Commission Against Corruption Act 1988*. Under section 9 of that Act, conduct of the type described in section 8 as being in the general nature of corrupt conduct is not “corrupt conduct” unless it could constitute or involve: (a) a criminal offence, (b) a disciplinary offence, (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating

the services of a public official, or (d) in the case of conduct of a Minister of the Crown or a member of a House of Parliament—a substantial breach of an applicable code of conduct. Accordingly, the effect of prescribing the NSW Ministerial Code of Conduct as an applicable code is that a suspected breach of the Code may be investigated by the Independent Commission Against Corruption and, if substantiated, give rise to a finding of corrupt conduct. The NSW Ministerial Code of Conduct commenced on 20 September 2014.

2 Compliance with oaths of office

A Minister must comply with their oaths of office as a Member of the Executive Council and as a Minister of the Crown.

Note. A Member of the Executive Council swears (or affirms) that “I will perform the functions and duties of an Executive Councillor faithfully and to the best of my ability and, when required to do so, freely give my counsel and advice to the Governor or officer administering the Government of New South Wales for the time being for the good management of the public affairs of New South Wales, and that I will not directly or indirectly reveal matters debated in the Council and committed to my secrecy, but that in all things be a true and faithful councillor”. In addition, a Minister swears (or affirms) that “I will perform the functions and duties of [the relevant Ministerial office] faithfully and to the best of my ability”.

3 Compliance with the law

A Minister must not knowingly breach the law, the NSW Lobbyists Code of Conduct, or any other applicable code of conduct under the *Independent Commission Against Corruption Act 1988*.

Note. There are a range of laws which apply to Ministers in their capacity as public office holders, including: misconduct in public office, which is a common law offence—see *R v Quach [2010] VSCA 106*; *Blackstock v The Queen [2013] NSWCCA 172*; bribery, which is a common law offence—see *R v Allen (1992) 27 NSWLR 398*; *R v Glynn (1994) 33 NSWLR 139*; Part 4A of the *Crimes Act 1900*, which establishes certain statutory offences relating to the receipt or soliciting of corrupt commissions; the *Election Funding, Expenditure and Disclosures Act 1981*, which establishes a number of electoral offences; the *State Records Act 1998* and the *Government Information (Public Access) Act 2009*, which create certain offences relating to record keeping and access to government information.

4 Compliance with the Schedule to the NSW Ministerial Code of Conduct

A Minister must not knowingly breach the Schedule to the NSW Ministerial Code of Conduct. Accordingly, a substantial breach of the Schedule is, if done knowingly, a substantial breach of the NSW Ministerial Code of Conduct.

5 Lawful directions to the public service

- (1) A Minister must not knowingly issue any direction or make any request that would require a public service agency or any other person to act contrary to the law.
- (2) A Minister who seeks advice from a public service agency that is subject to the Minister’s direction must not direct that agency to provide advice with which the agency does not agree.
- (3) For the avoidance of doubt, this section does not prevent Ministers discussing or disagreeing with the advice of a public service agency, making a decision contrary to agency advice or directing an agency to implement the Minister’s decision (whether or not the agency agrees with it). Nor does this section prevent an agency changing its advice if its own view changes, including following discussions with the Minister.

6 Duty to act honestly and in the public interest

A Minister, in the exercise or performance of their official functions, must not act dishonestly, must act only in what they consider to be the public interest, and must not act improperly for their private benefit or for the private benefit of any other person.

7 Conflicts of interest

- (1) A Minister must not knowingly conceal a conflict of interest from the Premier.
- (2) A Minister must not, without the written approval of the Premier, make or participate in the making of any decision or take any other action in relation to a matter in which the Minister is aware they have a conflict of interest.
- (3) A **conflict of interest** arises in relation to a Minister if there is a conflict between the public duty and the private interest of the Minister, in which the Minister's private interest could objectively have the potential to influence the performance of their public duty. Without limiting the above, a Minister is taken to have a conflict of interest in respect of a particular matter on which a decision may be made or other action taken if:
 - (a) any of the possible decisions or actions (including a decision to take no action) could reasonably be expected to confer a private benefit on the Minister or a family member of the Minister, and
 - (b) the nature and extent of the interest is such that it could objectively have the potential to influence a Minister in relation to the decision or action.

Note. See also Part 3 of the Schedule for further requirements regarding conflicts of interest.

8 Corrupt private benefits

- (1) A Minister must not solicit, accept, or agree to solicit or accept, any private benefit as an inducement or reward for doing or not doing something in the exercise of official functions or for showing or not showing favour or disfavour to any person in the exercise of official functions.
- (2) A Minister must not improperly encourage or solicit the giving of any private benefit to any other person as an inducement or reward for that person, the Minister or any other person doing or not doing something in the exercise of official functions or for showing or not showing favour or disfavour to any person in the exercise of official functions.

9 Misuse of public property for private benefit

A Minister must not improperly use public property, services or facilities for the private benefit of themselves or any other person.

10 Misuse of information for private benefit

- (1) A Minister must not improperly use any information acquired in the course of their official functions, including in the course of Cabinet deliberations, for the private benefit of themselves or any other person.
- (2) A Minister must not improperly communicate any such information to any other person for the purpose of the information being used for the private benefit of that person, the Minister, or any other person.
- (3) The obligations in this section continue to apply to former Ministers.

11 Definitions

In this Code (including the Schedule), and unless the context otherwise requires:

business includes a not-for-profit or charitable undertaking.

conflict of interest has the meaning given by section 7 of this Code.

de facto partner has the meaning given by section 21C of the *Interpretation Act 1987*.

director, in relation to a company or other business, includes any member however described of the governing body of the company or other business, and **directorship** has a corresponding meaning.

dishonestly means dishonestly according to the standards of ordinary people and known by the Minister to be dishonest according to the standards of ordinary people.

family member, in relation to a Minister, means:

- (a) the Minister's spouse or de facto partner, or
- (b) a child of the Minister or of the Minister's spouse or de facto partner, or
- (c) a parent of the Minister or of the Minister's spouse or de facto partner, or
- (d) a brother or sister (including step-brother or step-sister) of the Minister, or
- (e) any other person with whom the Minister is in an intimate personal relationship.

former Minister means any Minister who ceased to hold office as a Minister after 20 September 2014.

gift means something for which no, or no adequate, consideration is given but does not include:

- (a) hospitality, or
- (b) a political donation that is disclosed, or required to be disclosed, under Part 6 of the *Election Funding, Expenditure and Disclosures Act 1981*.

Note. This is a broad definition and could include money, vouchers, tickets (other than a ticket provided as an act of hospitality in respect of an event which the Minister is attending—see below), goods, services, and contributions to travel and accommodation.

hospitality means the provision of benefits that are directly associated with, and consumed at and during the course of, a particular event and for which no, or no adequate, consideration is given. For the avoidance of doubt, hospitality does not extend to any travel to and from, or overnight accommodation at, the place at which an event is to be held.

Note. Hospitality may include a ticket or right of entry to the relevant event, as well as food, beverage, entertainment and other consumables provided at the event.

immediate family member, in relation to a Minister, means:

- (a) the Minister's spouse or de facto partner, or
- (b) a child of the Minister or of the Minister's spouse or de facto partner if any one or more of the following applies:
 - (i) the child is under 18,
 - (ii) the child is a dependent of the Minister or the Minister's spouse or de facto partner,
 - (iii) the child resides with the Minister or the Minister's spouse or de facto partner.

knowingly means with awareness that the relevant circumstance or result exists or will exist in the ordinary course of events.

Minister includes:

- (a) any Member of the Executive Council of New South Wales, and
- (b) if used in or in relation to this Code (other than Parts 1 and 5 of the Schedule to the Code)—a Parliamentary Secretary, and
- (c) if used in or in relation to Part 5 of the Schedule to the Code—a former Minister.

Ministerial Register of Gifts means the register kept by the Department of Premier and Cabinet on behalf of the Premier in accordance with clause 19 of the Schedule to the Code.

Ministerial Register of Interests means the register kept by the Department of Premier and Cabinet on behalf of the Premier in accordance with clauses 6, 7, 9, 11, 16 and 27 of the Schedule to the Code.

Note. The Ministerial Register of Interests is a confidential register kept by the Department of Premier and Cabinet on behalf of the Premier. Its contents are made available only to the Premier and the Cabinet for the sole purpose of enabling them to better avoid and manage potential conflicts of interest. The *Government Information (Public Access) Act 2009* provides that there is conclusively presumed to be an overriding public interest against the disclosure of the Ministerial Register of Interests.

Parliamentary Secretary means a person holding office as a Parliamentary Secretary under Part 4A of the *Constitution Act 1902*.

person includes a natural person, body corporate, unincorporated association, partnership or other entity.

post-separation employment, in relation to a Minister, includes any employment of the Minister, or engagement of the Minister to provide services (including indirectly through a business) after the Minister has ceased to hold office as a Minister.

Note. Secondary employment while in office as a Minister is generally prohibited—see clause 3 of the Schedule to this Code.

private benefit means any financial or other advantage to a person (other than the State of New South Wales or a department or other government agency representing the State), other than a benefit that:

- (a) arises merely because the person is a member of the public or a member of a broad demographic group of the public and is held in common with, and is no different in nature and degree to, the interests of other such members, or
- (b) comprises merely the hope or expectation that the manner in which a particular matter is dealt with will enhance a person's or party's popular standing.

ruling means a ruling by the Premier, in accordance with clause 27 of the Schedule to this Code, under clause 1 (1) or (4), 2 (3), 3 (5) or 12 (2) of the Schedule.

12 Interpretative provisions

- (1) The preamble, headings and notes do not form part of the NSW Ministerial Code of Conduct, but regard may be had to them in the interpretation of its provisions.
- (2) The singular includes the plural.
- (3) A reference to law is a reference to the laws of the State of New South Wales and to the laws of the Commonwealth of Australia in so far as they have application in the State of New South Wales.
- (4) If a word or expression is defined in section 11, other parts of speech and grammatical forms of the word or expression have corresponding meanings.
- (5) The word “may”, if used in relation to a power, indicates that the exercise (or not) of the power is discretionary. If a provision states that a person “may” do one thing and other things, the person may do none, some or all of those things.
- (6) The word “must”, if used in relation to a power or duty, indicates that the exercise of the power or duty is mandatory. If a provision states that a person “must” do one thing and other things, the person must do all of those things.

Schedule to the NSW Ministerial Code of Conduct

Part 1 Prohibited interests

1 Shareholdings

- (1) A Minister must not hold or acquire, whether legally or beneficially, any security or other interest in any public or private company or business except:
 - (a) as permitted by this clause, or
 - (b) where the Premier, being satisfied that the interest is unlikely to raise any conflict of interest or that any potential conflict of interest can be appropriately managed, has issued a ruling that the particular interest may be held or acquired.
- (2) A Minister must divest any such interest before or, if that is not practicable, as soon as practicable after appointment. Transferring the interest to a family member or to a trust in which the Minister or a family member has a beneficial interest does not constitute divestment for these purposes.
Note. Ministers should also be mindful of the potential for any interests held or acquired by family members or other persons with whom they have a personal relationship to give rise to a conflict of interest for the Minister.
- (3) A Minister may retain, acquire and hold an interest in a superannuation fund, publicly listed managed fund or other trust arrangement (*fund*) if:
 - (a) the fund is broadly diversified, the Minister has no influence over particular investment decisions of the fund, and the fund does not invest to any special extent in a particular business or business sector that could reasonably be expected to give rise to a conflict of interest (a *diversified arms-length fund*), or
 - (b) the Minister is not aware of the particular investments of the fund, the day-to-day management of the fund is undertaken by a person who is independent of the Minister, that person has discretion as to particular investment decisions of the fund, and the Minister and that person have entered into a legally binding written agreement that the person is not to disclose or discuss the particular investments of the fund with the Minister (a *blind trust*).
- (4) The Minister may seek a ruling from the Premier that a particular fund meets the criteria of a diversified arms-length fund or a blind trust.
- (5) This clause does not apply to a legal interest in a company or other entity (including a State owned corporation) that is held by a Minister in their official capacity on behalf of the State.

2 Directorships and other positions

- (1) A Minister must not hold or accept any position as a director of a public or private company or any other business.
- (2) A Minister must resign from any such directorship before or, if that is not practicable, as soon as practicable after appointment.
- (3) However, a Minister may retain or accept appointment as a director where:
 - (a) the directorship relates to a personal or family business of the Minister (such as a family farm or a self-managed superannuation fund—provided the fund is a permitted fund under clause 1), and
 - (b) the directorship is not likely to give rise to a conflict of interest, and

- (c) the Premier gives a ruling that the Premier approves the retention or acceptance of the directorship.

3 Secondary employment

- (1) A Minister must not engage in any form of employment or professional practice, including as a sole trader.
- (2) A Minister must not participate in the management of any business.
- (3) A Minister must not act as a contractor, consultant or adviser, whether paid or unpaid, to any business, other than to the extent that consultation or advice occurs in the context of the proper exercise of the Minister's functions as a Minister or Member of Parliament.
- (4) A Minister must terminate any form of secondary employment or professional practice before or, if that is not practicable, as soon as practicable after appointment.
- (5) However, a Minister may participate in the employment or management of a business where:
 - (a) the participation relates to a personal or family business of the Minister (such as a family farm or a self-managed superannuation fund—provided the fund is a permitted fund under clause 1), and
 - (b) the participation is not likely to give rise to a conflict of interest, and
 - (c) the Premier gives a ruling that the Premier approves the participation (including the nature and extent of participation).

4 Divestiture at the direction of the Premier

In addition to clauses 1–3, a Minister must promptly divest any interest if the Premier, being satisfied that the interest has the potential to give rise to a conflict of interest, directs the Minister to do so. Transferring the interest to a family member or to a trust in which the Minister or a family member has a beneficial interest does not constitute divestment for these purposes.

Part 2 Standing disclosures of interests

Note. This Part also applies to Parliamentary Secretaries, and a reference to a Minister in this Part includes a reference to a Parliamentary Secretary.

5 Disclosures to Parliament

A Minister must comply with their obligations as a Member of Parliament under section 14A of the *Constitution Act 1902* and the *Constitution (Disclosures by Members) Regulation 1983* in relation to the disclosure of their pecuniary and other interests to the Parliament.

6 Initial disclosures

- (1) As soon as practicable upon appointment, a Minister must provide to the Premier:
 - (a) a copy of the last return provided to the Parliament under the *Constitution (Disclosures by Members) Regulation 1983*, and
 - (b) a notice in writing of any event that has occurred since that return, the disclosure of which will be required to be included in the next return that is to be provided to the Parliament under the *Constitution (Disclosures by Members) Regulation 1983*, and
 - (c) a notice in writing of any pecuniary and other interests of their immediate family members, the disclosure of which would be required under the

Constitution (Disclosures by Members) Regulation 1983 if the relevant interest were instead that of the Minister.

(2) The disclosures made under this clause are to be kept on the Ministerial Register of Interests.

7 Continuous updating

(1) A Minister must provide the Premier with:

- (a) a copy of any return that is provided to the Parliament under the *Constitution (Disclosures by Members) Regulation 1983* at the same time that it is provided to the Parliament, and
- (b) a notice in writing of any event that has occurred since their most recent Parliamentary return, the disclosure of which will be required to be included in the next return that is to be provided to the Parliament under the *Constitution (Disclosures by Members) Regulation 1983*, as soon as practicable after the event occurs, and
- (c) a notice in writing of any event that has occurred in relation to the pecuniary and other interests of their immediate family members, the disclosure of which would be required under the *Constitution (Disclosures by Members) Regulation 1983* if the relevant interest were instead that of the Minister, as soon as practicable after the event occurs.

(2) The disclosures made under this clause are to be kept on the Ministerial Register of Interests.

8 Effect of disclosures

The disclosure of an interest by a Minister under this Part does not affect the Minister's duties under Part 3 if a conflict of interest arises as a result of that interest in respect of a particular matter.

9 Schedule to the Ministerial Register of Interests

(1) A schedule of the disclosures of current interests made by all Ministers under this Part is to be kept on the Ministerial Register of Interests.

(2) The schedule is to be available for inspection by all Ministers at any meeting of the Cabinet or any Cabinet Committee and otherwise by arrangement with the Premier.

Part 3 Conflicts of interest

Note. This Part also applies to Parliamentary Secretaries, and a reference to a Minister in this Part includes a reference to a Parliamentary Secretary.

10 Duty to disclose

(1) A Minister must promptly give notice to the Premier of any conflict of interest that arises in relation to any matter.

(2) Such a notice must be given in respect of a matter even if:

- (a) the Minister has previously disclosed the relevant interest under Part 2 (Standing disclosures of interests) or under Part 3 (Conflicts of interest) in respect of a different matter, or
- (b) the Minister intends to divest themselves of the relevant interest prior to making a decision or taking action.

11 Form of disclosure

(1) A notice under clause 10 must:

- (a) be in writing, signed by the Minister, and
- (b) specify the nature and extent of the relevant interest, the matter to which it relates, and the reason why a conflict of interest arises, and
- (c) be placed on the Ministerial Register of Interests.

(2) If during a meeting of the Executive Council, the Cabinet or a Cabinet Committee a matter arises in which a Minister has a conflict of interest the Minister must (whether or not the Minister has previously given notice to the Premier):

- (a) as soon as practicable after the commencement of the meeting, disclose to those present the conflict of interest and the matter to which it relates, and
- (b) ensure that the making of the disclosure is recorded in the official record of the proceedings, and
- (c) abstain from decision-making if required by, and in accordance with, clause 12, and
- (d) if notice of the conflict of interest has not previously been given to the Premier under subclause (1)—give such notice as soon as practicable after the meeting in accordance with that subclause.

12 Minister to abstain from decision-making

- (1) A Minister who has a conflict of interest in a matter must abstain from making, or participating in, any decision or from taking, or participating in, any action in relation to the matter.
- (2) However, the Premier may, if satisfied that no conflict of interest arises or that any potential conflict of interest can be appropriately managed, make a ruling authorising the Minister to continue to act.
- (3) A Minister who has a conflict of interest in a matter arising during a meeting of the Executive Council, the Cabinet or a Cabinet Committee must:
 - (a) abstain from participating in any discussion of the matter and from any decision-making in respect of it, and
 - (b) unless the Premier (or the chair of the meeting in the absence of the Premier) otherwise approves—not be present during any discussion or decision-making on it.

13 Discretion to disclose and abstain

A Minister may, if they have some other substantial personal connection with a matter or for any other reason, disclose an interest and abstain from decision-making in relation to a matter in accordance with this Part even if the interest might not comprise a conflict of interest.

14 Part does not apply to Ministerial remuneration and entitlements

This Part does not apply in relation to matters affecting only the remuneration and entitlements of Ministers.

15 Other conflicts

This Part does not affect a Minister's duties to avoid, disclose and otherwise appropriately manage actual or perceived conflicts.

16 Disclosure of private benefits to other members of the Government

- (1) A Minister who is aware that a particular decision to be made or other action to be taken by that Minister could reasonably be expected to confer a private benefit on another Member of Parliament belonging to the governing political party or coalition

of parties or any of their family members must give notice to the Premier of the matter before making the decision or taking the action.

Note. A Ministerial decision that relates to another Member's electorate does not necessarily confer a private benefit on the Member if the benefit to the relevant Member only arises because the Member is a part of the relevant community and that benefit is common with, and no different in nature and degree to, the benefit conferred on the other members of the community, or if the benefit to the Member comprises only the prospect that the Minister's decision could enhance the Member of Parliament's popular standing in their community—see definition of **private benefit** in section 11 of the NSW Ministerial Code of Conduct.

(2) The notice must:

- be in writing, signed by the Minister, and
- specify the decision to be made or action to be taken and the private benefit that is expected to be conferred, and
- be placed on the Ministerial Register of Interests.

Part 4 Gifts and hospitality

Note. This Part also applies to Parliamentary Secretaries, and a reference to a Minister in this Part includes a reference to a Parliamentary Secretary.

17 Overarching duty to avoid conflicts and refuse inducements

- A Minister must not solicit or accept any gift, hospitality or other benefit of any kind that:
 - could reasonably be expected to give rise to a conflict of interest, or
 - could reasonably be perceived as an inducement (or attempted inducement) or reward for doing or not doing something in the exercise of official functions or for showing or not showing favour or disfavour to any person in the exercise of official functions.
- Any such gift, hospitality or benefit (whether offered or suggested, directly or indirectly) must promptly be disclosed in writing by the Minister to the Secretary of the Department of Premier and Cabinet.
- A Minister must otherwise avoid all situations in which it could reasonably be perceived that any person, through the provision of a gift, hospitality or other benefit of any kind, is attempting to secure the influence or favour of the Minister.

Note. See section 8 of the NSW Ministerial Code of Conduct in respect of corrupt private benefits. The offer of a corrupt private benefit may also trigger an obligation to report the matter to the Independent Commission Against Corruption under section 11 of the *Independent Commission Against Corruption Act 1988*.

18 Gifts presented to the Minister as an act of goodwill

- If the offer of a gift is an act of goodwill towards the people of New South Wales and offence might possibly be given by its rejection, the Minister may accept the gift.
- If such a gift has a market value of more than \$500, the Minister must elect either to:
 - retain the gift and pay to the State the difference between \$500 and the value of the gift, or
 - hand the gift to the State.
- If the Minister elects to retain the gift under subclause (2) (a), the Minister must provide the Secretary of the Department of Premier and Cabinet with a written declaration signed by the Minister:
 - identifying the giver of the gift, and
 - stating that the Minister wishes to retain the gift, and

- (c) stating the estimated value of the gift (attaching a valuation or details as to the methodology by which the value was estimated), and
- (d) attaching a cheque payable to the NSW Treasury for the relevant amount.

(4) If the Minister elects to hand the gift to the State under subclause (2) (b), the Minister must arrange for the gift to be delivered to the Secretary of the Department of Premier and Cabinet together with a written declaration signed by the Minister:

- (a) identifying the giver of the gift, and
- (b) stating that the Minister wishes to surrender the gift to the State and relinquish any future claim to ownership, and
- (c) stating any recommendation the Minister may wish to make as to the manner in which the gift should be kept, displayed or otherwise dealt with by the State.

(5) Gifts handed to the State by the Minister become the property of the State under the control of the Secretary of the Department of Premier and Cabinet.

Note. Such gifts will generally be transferred to NSW galleries, museums and other appropriate Government establishments.

19 Ministerial Register of Gifts

The Secretary of the Department of Premier and Cabinet is to maintain a Ministerial Register of Gifts containing a copy of any declaration or disclosure of a gift or hospitality offered to a Minister and disclosed under this Part.

20 Application of this Part to multiple gifts, gifts given to others, etc

When applying this Part:

- (a) multiple gifts offered by the same person within any 6 month period are to be treated also as if they were a single gift offered by that person, and
- (b) a gift offered by one person on behalf of another person is to be treated also as a gift offered by that other person.

21 Gifts or hospitality to others

- (1) A Minister must take all reasonable steps to ensure that none of their immediate family members or Ministerial office staff are offered or receive gifts or hospitality in circumstances that:
 - (a) could reasonably be expected to give rise to a conflict of interest, or
 - (b) could reasonably be perceived as an indirect inducement (or attempted inducement) of, or reward to, the Minister for doing or not doing something in the exercise of official functions or for showing or not showing favour or disfavour to any person in the exercise of official functions.
- (2) A Minister who becomes aware of any such gift or hospitality must promptly disclose it in writing to the Secretary of the Department of Premier and Cabinet.

22 Gifts or hospitality that may be accepted

- (1) Gifts of a token kind and reasonable acts of hospitality may be accepted by the Minister and need not be disclosed under this Part.
- (2) In deciding whether to accept such gifts or hospitality, Ministers must satisfy themselves that doing so will not give rise to a conflict of interest.
- (3) If the hospitality has a market value of more than \$500, the Minister must promptly disclose in writing the receipt of the hospitality to the Secretary of the Department of Premier and Cabinet.

Part 5 Employment after leaving Ministerial office

23 Offers of employment received while in office

A Minister who, while in office, wishes to consider accepting an offer of post-separation employment must, if it relates to any of their current portfolio responsibilities or any portfolio responsibilities held during the previous 2 years of Ministerial office, first obtain the advice of the Parliamentary Ethics Adviser.

Note. The receipt of an offer of post-separation employment is also a private benefit to which provisions of the NSW Ministerial Code of Conduct might also apply.

24 Offers of employment received after leaving office

- (1) A Minister who, within 18 months after ceasing to hold office, wishes to consider accepting an offer of post-separation employment must, if it relates to any of the portfolio responsibilities held during the last 2 years of Ministerial office, first obtain the advice of the Parliamentary Ethics Adviser.
- (2) This clause does not apply to any offer of post-separation employment by the State of New South Wales or any agency representing the State.

Note. The *Lobbying of Government Officials Act 2011* imposes additional restrictions on the ability of a former Minister to engage in lobbying activities within 18 months after leaving Ministerial office.

25 Advice of the Parliamentary Ethics Adviser

- (1) The Parliamentary Ethics Adviser may advise against the acceptance of an offer of post-separation employment, either generally or unless certain conditions are met.
- (2) A Minister must not, while in office, accept any offer of post-separation employment if the Parliamentary Ethics Adviser has advised against it.
- (3) If a Minister accepts an offer of post-separation employment (whether or not against the advice of the Parliamentary Ethics Adviser), any advice obtained from the Parliamentary Ethics Adviser in respect of that offer is to be tabled in the House of Parliament to which the Minister belongs or belonged.

Part 6 Enforcement

Note. This Part also applies to Parliamentary Secretaries, and a reference to a Minister in this Part includes a reference to a Parliamentary Secretary.

26 Premier to determine sanctions

The enforcement of the requirements of this Schedule, including any sanctions for a breach, is a matter for the Premier.

Note. While enforcement of the requirements of this Schedule, including any sanctions for a breach, is a matter for the Premier, the NSW Ministerial Code of Conduct has also been adopted for the purposes of the *Independent Commission Against Corruption Act 1988*.

27 Rulings

- (1) A Minister must, when applying for a ruling from the Premier, include with the application an accurate statement of all material information that is relevant to the decision whether to give the ruling. A ruling that is obtained on the basis of inaccurate or incomplete information is not effective and may not be relied upon by the Minister for the purposes of the NSW Ministerial Code of Conduct.
- (2) A ruling is to be made in writing and dated, and placed on the Ministerial Register of Interests.

Note. See clauses 1 (1) and (4), 2 (3), 3 (5) and 12 (2) of the Schedule, which provide for the Premier to issue rulings that a particular course of conduct is permitted.

- (3) A ruling is effective on and from the date it is given and continues in effect until:
 - (a) it is revoked by the Premier, or
 - (b) any conditions specified in the ruling cease to be satisfied, or
 - (c) the information upon which the ruling was given changes materially.

Note. If there is a material change of circumstances, the Minister may seek a new ruling from the Premier.
- (4) The Premier may direct that a ruling that has been sought by a Minister has effect as a ruling pending a decision by the Premier on the matter.
- (5) A ruling in respect of the Premier may be given if approved by the Cabinet.